

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

FLOYD L. SEMONS,

Plaintiff,

v.

Case No. 12-CV-65

ROBERT SADOWSKI and CALVIN SMITH,

Defendants.

ORDER

The plaintiff has filed a letter request to add the Milwaukee County Jail and the Deputy Inspector as defendants. (Docket 32) The court construes the filing as a motion to amend the complaint. The plaintiff states that he seeks to add the defendants because the Deputy Inspector “ordered him to be on restraint.” He filed a Milwaukee County Sheriff’s Office Supplementary Report along the letter request which supports his assertion that on May 30, 2011, the Deputy Inspector ordered him to be restrained.¹ The plaintiff did not file a proposed amended complaint along with his request. The defendants have not responded.

The Local Rules provide in relevant part: “Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.” Civil L. R. 15(a) (E.D. Wis.) Here, the plaintiff has not filed a proposed amended complaint and therefore his request will be denied without prejudice.

In this case, the plaintiff is proceeding on Eighth Amendment excessive force and conditions of confinement claims based on allegations that he was restrained in his cell for five

¹ In his amended complaint, the plaintiff alleges that the incident took place in May or June 2010. However, despite the year discrepancy, he appears to be describing the same incident.

days causing injury. Thus, it appears that he could state a claim against the unnamed Deputy Inspector who allegedly ordered the restraint. However, a prison or jail is not a person under 42 U.S. C. § 1983 and the plaintiff may not proceed against the Milwaukee County Jail. *See, e.g., Powell v. Cook County Jail*, 814 F. Supp. 757, 758 (N.D. Ill. 1993).

The plaintiff may file a second amended complaint adding the Deputy Inspector as a defendant on or before September 10, 2012. He should use discovery to identify the name of the Deputy Inspector. The court will extend the deadline for the completion of discovery for that limited purpose. The plaintiff is advised that because an amended complaint supersedes a prior complaint, any matters not set forth in the second amended complaint are, in effect, withdrawn. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056 (7th Cir. 1998). If the plaintiff does not file a second amended complaint by September 10, 2012, the March 27, 2012, amended complaint will remain the operative complaint in this action.

NOW, THEREFORE, IT IS ORDERED that the plaintiff's motion to add defendants (Docket 32) be and hereby is **denied without prejudice**.

IT IS FURTHER ORDERED that the plaintiff may file a second amended complaint, as described herein, on or before **September 10, 2012**. The plaintiff may use discovery for the limited purpose of identifying the Deputy Inspector.

Dated at Milwaukee, Wisconsin this 13th day of August, 2012.

BY THE COURT:

s/ *NANCY JOSEPH*

NANCY JOSEPH
United States Magistrate Judge